

WILKINSON, BARKER, KNAUER & QUINN, LLP

Washington, DC
Frankfurt, Germany

2300 N Street, NW
Washington, DC 20037-1128

telephone: 202.783.4141
facsimile: 202.783.5851

May 1, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20057

RM 9249
RECEIVED

MAY 1 - 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Opposition of the Public Service Regulatory Commission
to Petition for Rulemaking of the Telecommunications
Resellers Association
RM --

Dear Ms. Roman Salas:

Transmitted herewith, on behalf of the Public Service Regulatory Commission of the Republic of Panama, are an original and four (4) copies of its opposition to the Petition for Rulemaking of the Telecommunications Resellers Association (RM --).

Should there be any questions regarding the enclosed, please communicate with the undersigned counsel.

Very truly yours,
WILKINSON, BARKER, KNAUER & QUINN, LLP

M. Veronica Pastor

Leon T. Knauer
M. Veronica Pastor*
Counsel for the Public Service Regulatory Commission
of the Republic of Panama

* Admitted in New York

No. of Copies rec'd 10 + 4
List ABCDE

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAY - 1 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition For Rulemaking Of The)
Telecommunications Resellers Association)
To Eliminate Comity-Based Enforcement Of)
Other Nations' Prohibitions Against The)
Uncompleted Call Signaling Configuration)
Of International Call-back Service)

RM-

**OPPOSITION OF THE PUBLIC SERVICE REGULATORY COMMISSION OF THE
REPUBLIC OF PANAMA**

WILKINSON, BARKER, KNAUER & QUINN, LLP
Leon T. Knauer
M. Veronica Pastor
2300 N Street, NW
Washington, DC 20037-1128
(202) 783-4141

Attorneys for the Public Service Regulatory Commission of
the Republic of Panama

May 1, 1998

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	i
I. TRA FAILS TO DEMONSTRATE CHANGED CIRCUMSTANCES REQUIRING THE COMMISSION TO REVERSE ITS POLICY	4
II. THE WTO AGREEMENT ITSELF IS BASED ON THE PRINCIPLE OF MUTUAL RESPECT OF NATIONAL LEGISLATION	6
III. RESCISSION BY THE COMMISSION OF ITS COMMITMENT TO HELP OTHER COUNTRIES ENFORCE THEIR ANTI CALL-BACK LAWS WOULD DAMAGE ITS INTERNATIONAL CREDIBILITY	6
IV. THE COMMISSION'S COMITY-BASED CALL-BACK PROHIBITION AND ENFORCEMENT ACTIONS FOSTER ITS EFFORTS TO PROMOTE GLOBAL COMPETITION	8
V. CONCLUSION	11

EXECUTIVE SUMMARY

The Public Service Regulatory Commission of the Republic of Panama, *Ente Regulador de los Servicios Públicos* ("Ente"), opposes the petition for rulemaking of the Telecommunications Resellers Association ("TRA") to eliminate the Commission's policy prohibiting U.S. carriers from offering call-back services using uncompleted call signaling to countries where this service is expressly banned and enforcing those countries' prohibitions on the basis of comity.

In its Petition, TRA contends that circumstances have changed since the Commission adopted its policy. TRA also maintains that the Commission should rescind its call-back policy because it undermines the efforts of the World Trade Organization and the Commission to open global markets to competition. However, the only changed circumstance presented by TRA is the adoption of the WTO Agreement by 69 countries, and the Commission's adoption of new foreign entry rules. Moreover, the WTO Agreement includes a schedule for market liberalization in which 69 nations (including some that have requested the Commission's assistance in enforcing their call-back prohibitions) agree to introduce full competition in their telecommunications markets by a specific date. The Ente views the Commission's comity-based prohibition on call-back using uncompleted call signaling as being totally consistent with the spirit and intent of the WTO Agreement. To rescind the call-back policy would violate well-established principles of international law and would undermine the Commission's international credibility as well as its efforts to foster the opening of global markets to competition.

While call-back services may promote competition in developed telecommunications markets, they severely impede the efforts of carriers in developing markets to extend and modernize

their networks while reducing prices in order to introduce competition. Therefore, by preventing call-back operators from entering the Panamanian market until the scheduled liberalization is established, the Commission supports Panama's liberalization efforts while fully respecting the binding commitments of the U.S. under the WTO.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

**Petition For Rulemaking Of The
Telecommunications Resellers Association
To Eliminate Comity-Based Enforcement Of
Other Nations' Prohibitions Against The
Uncompleted Call Signaling Configuration
Of International Call-back Service**

RM-

**OPPOSITION OF THE PUBLIC SERVICE REGULATORY COMMISSION OF THE
REPUBLIC OF PANAMA**

The Public Service Regulatory Commission of the Republic of Panama,¹ through its attorneys, hereby opposes the petition for rulemaking of the Telecommunications Resellers Association ("TRA") to eliminate the Commission's prohibition on offering call-back services using uncompleted call signaling to countries where this service is expressly banned (the "Petition"). The Ente is the independent regulatory agency responsible for regulating the telecommunications, electric and water industries in the Republic of Panama and for enforcing the laws and regulations

¹ *Ente Regulador de los Servicios Públicos de la República de Panamá*, (hereinafter "Ente").

pertaining to those services. In 1996, Panama adopted Law 31, its General Telecommunications Law,² providing for an orderly transition for INTEL, S.A., the Panamanian telecommunications operator, from a government-owned monopoly to a player in a fully competitive environment. In 1997, forty-nine percent (49%) of INTEL, S.A. and operative control of the company were sold to Cable & Wireless in a well-publicized privatization. The company was renamed Cable & Wireless of Panama. Law 31 also expressly prohibits the offering of call-back services in Panama.³ The General Telecommunications Regulations, adopted by Executive Decree No. 73 of April 9, 1997 (the "General Telecommunications Regulations") unequivocally reiterate this prohibition.⁴ In 1998, the Ente officially notified the Commission of the prohibition, and Panama is now on the Commission's list of thirty-five (35) countries where call-back services are prohibited. Panama has been a member of the World Trade Organization (the "WTO") since 1997.

² *Ley No. 31 de 9 de enero de 1996, Gaceta Oficial, viernes 9 de febrero de 1996.* (hereinafter Law 31).

³ Article 56. Infractions: The distortion of the direction of international traffic, through mechanisms which allow access to telephone networks abroad, to obtain a dial tone originating in said networks and to subscribe, promote, market, re-route or resell of international long distance service.

⁴ Article 66. The provision, commercialization, marketing, and use of call-back service is prohibited within the national territory, independently of where those services are billed.

Article 67. Call-back services referred to in the previous article constitute a type of call-back service, initiated in the national territory yet billed as if they originated outside of the national territory. These services are initiated through a telephone signal which is not completed, an international access number to the service with an automatic charge to the recipient of the call, a completed call through which the caller sends a signal to initiate the call-back, the Internet, or any other means of systematically obtaining a dial tone in the country of destination, through which an international long distance call can originate and which is registered as having originated abroad.

In its Petition, TRA contends that circumstances have changed since the Commission adopted its policy on comity-based enforcement of the uncompleted call signaling configuration of international call-back services in those countries which specifically prohibit this practice. The basis of TRA's contention is that the United States and 68 other countries have recently entered into a historic agreement for liberalization of their telecommunications sectors within the framework of the WTO, and that the Commission's call-back policy is inconsistent with the intent and spirit of this Agreement because call-back services advance important public goals, such as fostering lower collection rates and stimulating competition. TRA concludes that the Commission should rescind its call-back policy because it undermines the efforts of the World Trade Organization and the Commission to open global markets to competition. Nothing could be further from the truth.

A similar argument was made and rejected by the Commission before the signing of the WTO Agreement on Basic Telecommunications Services (the "WTO Agreement") in the Via USA Reconsideration Order⁵, a proceeding in which several parties, including several U.S. facilities-based carriers, filed comments in support of the policy ultimately adopted by the Commission. As a threshold matter, TRA's effort to cause the Commission to reverse a well thought-out policy which is presently relied on by 35 countries is not based on any relevant changed circumstances. Rather, TRA relies on the recent WTO Agreement which adopts policies long advocated by the Commission and that a number of countries were in the process of implementing well before the execution of the WTO Agreement.

⁵ Via USA, Ltd. et al., Order on Reconsideration 10 FCC Rcd 9540 (1995) (hereinafter Via USA).

May 1, 1998

The Commission's ruling prohibiting the provision of uncompleted call signaling call-back services in countries that explicitly prohibit this practice is sound policy and should be maintained. In fact, international call-back services subvert competition. Moreover, the failure of the Commission to assist other nations in enforcing this prohibition against international call-back services after having publicly committed to do so would violate well-established principles of international law and would undermine the Commission's international credibility as well as its efforts to foster the opening of global markets to competition.

I. TRA FAILS TO DEMONSTRATE CHANGED CIRCUMSTANCES REQUIRING THE COMMISSION TO REVERSE ITS POLICY

TRA asserts that much has changed since the Commission adopted its call-back policy four years ago. Yet the only change TRA presents as an argument for initiating a rulemaking to eliminate the comity-based enforcement of anti call-back rules is the adoption of the WTO Agreement by 69 countries and the Commission's adoption of new foreign entry rules.⁶ According to TRA, continuation of the Commission's comity-based policy on call-back would be unfair to U.S. carriers because the WTO Agreement opens the U.S. market to foreign entry, whereas a number of foreign nations continue to temporarily restrict market entry. TRA neglects to mention that the WTO Agreement includes a schedule for market liberalization wherein 69 nations (including some that have requested the Commission's assistance in enforcing their call-back prohibitions) agree to

⁶ Rules and Policies on Foreign Participation in the U.S. Telecom. Market, 12 FCC Rcd. 23891 (1997), (hereinafter "Market Entry Order").

introduce full competition in their telecommunications markets by a specific date. Moreover, even the United States has exempted certain sectors such as Direct Broadcast Satellite (DBS), Direct To Home Satellite (DTH) and Digital Audio Radio Service (DARS) from its full liberalization commitments.

In its Petition, TRA attempts to resuscitate the argument that international call-back is a concern of only "a handful of foreign governments."⁷ A similar argument was unsuccessful in the Via USA proceeding.⁸ In November 1996, in an International Telecommunications Union (ITU) survey, sixty-seven (67) countries (almost the same number as ratified the WTO Agreement, and including two members of the European Union) declared that call-back services were illegal in their territory. Of these, twenty nations which adhered to the WTO Agreement have not rescinded their existing prohibition against call-back services. A number of these countries and others that prohibit call-back were committed to introducing competition and to privatizing their PTTs even before the WTO Agreement was signed. Bolivia, Peru and Hungary, for example had already made provisions for the termination of the monopoly status of their privatized national operators and the introduction of competition. These efforts to establish fully competitive marketplaces, which predated the WTO Agreement, are consistent with long-standing Commission policies. The WTO Agreement, which merely formalized these policies in an international forum, cannot be used by TRA as a rationale for causing the Commission to breach its call-back commitment to the international community.

⁷ TRA Petition at 2.

⁸ Via USA et al. 9 FCC Rcd. 2288 (1994) (Call-back Order) and Order on Reconsideration.

May 1, 1998

**II. THE WTO AGREEMENT ITSELF IS BASED ON THE PRINCIPLE OF
MUTUAL RESPECT OF NATIONAL LEGISLATION**

The Commission's comity-based prohibition on call-back using uncompleted call signaling is totally consistent with the spirit and intent of the WTO Agreement. As TRA correctly points out, the WTO Agreement aims to "replace the traditional regulatory regime of monopoly telephone service providers with pro-competitive and deregulatory policies."⁹ However, the Agreement does not require any of its signatories to permit competition before the date of their commitments. Just as the United States has a justifiable expectation that each country will eliminate its barriers to entry on the date specified, each country, in return, has the expectation that the United States will do nothing to undermine the agreed-to WTO schedule, including taking any premature action on the pretext of fostering competition. (This is not to say that eliminating the call-back policy would enhance competition; just the opposite is true.) In sum, it is the prerogative of each sovereign nation to implement its liberalization pledges in accordance with the commitments it acquired in its schedules of commitments and in accordance with its national law, without interference from U.S. carriers or the United States government.

**III. RESCISSION BY THE COMMISSION OF ITS COMMITMENT TO HELP
OTHER COUNTRIES ENFORCE THEIR ANTI CALL-BACK LAWS
WOULD DAMAGE ITS INTERNATIONAL CREDIBILITY**

The Commission has adopted a policy of directing U.S.-authorized carriers to respect foreign laws banning the call-back practice and assisting foreign governments in enforcing their restrictions.

⁹ TRA petition at 3, citing Market Entry Order.

May 1, 1998

In support of its position that this policy should be abandoned, TRA refers to the voiding by the Commission of a provision in the operating agreement between *Telecomunicaciones Internacionales de Argentina Telintar, S.A.* and AT&T that prohibited AT&T from offering call-back-like services in Argentina, citing the Commission's long-standing support of resale (the "Telintar" case). In Telintar, the Commission voided the contractual provision because "the restriction ... would ... require AT&T, in the guise of contractual obligations, to accomplish what the Commission refused to do in the call-back proceeding."¹⁰ The Commission's position in Telintar is fully consistent with its policy on call-back. The Argentine Telecommunications Regulatory Commission, the *Comisión Nacional de Comunicaciones* (CNC), formerly the *Comisión Nacional de Telecomunicaciones* (CNT), has specifically and unequivocally declared call-back services legal and in the public interest in Argentina. Thus, the restrictions Telintar sought to place on AT&T's service were illegal even under Argentinean law. Accordingly, Telintar supports the position of the Ente in that the Commission refused to take an action inconsistent with the call-back laws of a foreign country. The only difference is that in Telintar the laws of Argentina made call-back legal; whereas in Panama call-back is illegal.

In Via USA, the Commission established a public file to put U.S. carriers on notice of countries where call-back is illegal. A number of countries, including Panama, have taken advantage of this opportunity, and at least two countries have asked the Commission to take

¹⁰ AT&T Corp. Country Direct Service Agreement with Telecomunicaciones Internacionales de Argentina Telintar, S.A. (Memorandum Opinion and Order), 11 FCC Rcd. 13893 (1996).

enforcement actions against violators.¹¹ The Commission's policy, the establishment of the public file and its enforcement actions manifest an effort to adhere to the principle of international comity.

As stated, the provision of resold international public switched services for the purpose of offering U.S. dial tone through incomplete call signaling is unlawful in Panama. Law 31 and the General Telecommunications Regulations explicitly prohibit these practices. The Ente has put several carriers on notice that they are violating national law. However, because most call-back operators are located in the United States, the Commission is the only organization which can effectively address the problem.

In the past, international comity has been applied to other sectors of telecommunications, such as submarine cable landing licenses, 800 numbers and the use of Intersputnik satellites. If the FCC expects other countries to accommodate U.S. communications policies on issues such as private line interconnection and settlement rates, it should not ignore the laws, policies and public interest concerns of other countries regarding communications issues of major importance to them.

IV. THE COMMISSION'S COMITY-BASED CALL-BACK PROHIBITION AND ENFORCEMENT ACTIONS FOSTER ITS EFFORTS TO PROMOTE GLOBAL COMPETITION

The provision of telecommunications services has been traveling on a swift and irreversible road towards full liberalization for the past decade. This trend culminated with the signing of the

¹¹ Saudi Arabia and the Philippines have both reported U.S. carriers providing illegal call-back services to the Commission. The Commission has taken enforcement action against a carrier offering the service in the Philippines. Philippine Long Distance Telephone Company, Complaint, v. International Telecom, Ltd. 12 FCC Rcd. 15001 (1997).

WTO Agreement in February of 1997. As countries around the world move towards liberalization, the incentives that fuel call-back will diminish. In the interim, however, it is necessary to respect the decisions of foreign governments to prevent the growth of these services, which make inefficient use of existing facilities, violate national laws and impede the efforts of national telephone companies undergoing the transition from monopoly to fully competitive environments.

The Republic of Panama is in the process of introducing full competition in all telecommunications services. This process will be completed in five (5) years. In this regard, the United States cannot expect Panama to achieve overnight a degree of liberalization which has taken the United States over a decade to implement. In order to protect the public interest of the Panamanian people, the Government of Panama, like many other governments throughout the world, has chosen to establish a transition period towards full competition during which the incumbent will enjoy exclusivity. This exclusivity privilege is coupled with important network development and universal service obligations, as well as with an obligation to gradually reduce prices. As the Commission is well aware, the costs of effecting a transition from a monopoly to competition while expanding universal service and reducing collection rates are enormous. If international call-back operations continue to expand, U.S. callers seeking to communicate with Panama will find it increasingly difficult to do so because of the underfunded and inadequate infrastructure on the foreign end and because of network congestion created by inefficient call-back services competing for the use of these limited facilities. Because call-back providers do not contribute to universal service and to the financing of infrastructure development in the countries where they offer call-back services, the

additional traffic created by those services will not contribute to the economic growth of Panama or other emerging markets, and will ultimately destroy the very competition they purport to advance.

By preventing call-back operators from entering the Panamanian market until the scheduled liberalization arrives, the Commission helps Panama's liberalization efforts while fully respecting the binding commitments of the U.S. under the WTO. Conversely, international call-back services impose unacceptable burdens on the telecommunications networks of emerging markets, such as Panama's. Because such services require two international calls (an original call to the U.S. and a return call from the U.S.) to complete a call that technically requires only one, they needlessly increase congestion on the local and international facilities of the national operator.

The "competition" offered by TRA and its members is neither real nor societally beneficial. Call-back operators claim to enhance competition because they charge less for international calls than their foreign correspondents. While this argument may have merit in some circumstances, it is devoid of merit where a PTT is undergoing the transition to a competitive environment by implementing tariff reductions, reducing its work force and upgrading its infrastructure. In situations such as this, while the call-back operator makes a profit and its customers pay less, it is a predator in that it is diverting income from entities which are reducing prices in an orderly way as a prelude to facing competition from infrastructure providers. In this regard, it is relevant that call-back operators offer international services without being burdened by network development, universal service and tax obligations that domestic carriers must shoulder.

Because international call-back services retard development of the international infrastructure and cause network congestion to the detriment of U.S. business and consumers, the Commission

should maintain comity-based enforcement of other nations' prohibitions against international call-back services provided through uncompleted call signaling.

V. CONCLUSION

TRA has failed to demonstrate that circumstances have changed since the Commission adopted its policy on comity-based enforcement of other countries' call-back prohibitions. Moreover, the only change that TRA adduces, the introduction of the WTO Agreement, is actually the best argument for preserving the Commission's policy on this matter. A sudden change on the part of the Commission of a policy relied upon by thirty-five (35) countries would adversely impact the agency's international status and credibility. Finally, while call-back services may advance competition in mature telecommunications markets, they severely impede the efforts of carriers in developing markets to extend and modernize their networks while reducing prices in order to introduce competition. TRA's petition for rulemaking should be denied as repetitious and contrary to the public interest.

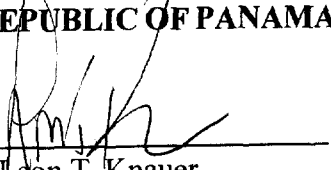
**Republic of Panama
Opposition - RM-**

May 1, 1998

Respectfully submitted,

**PUBLIC SERVICE REGULATORY COMMISSION OF
THE REPUBLIC OF PANAMA**

By:


Leon T. Knauer

M. Veronica Pastor

WILKINSON, BARKER, KNAUER & QUINN, LLP

2300 N Street, NW

Washington, DC 20037-1128

(202) 783-4141

May 1, 1998

CERTIFICATE OF SERVICE

I, Michelle O. Mesen, hereby certify that copies of the Opposition of the Public Service Regulatory Commission of the Republic of Panama were mailed this 1st day of May, 1998, by United States First Class mail, postage prepaid, to the following:

William Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Harold Furchtgott-Roth
Commissioner
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Susan Ness
Commissioner
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Michael Powell
Commissioner
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Gloria Tristani
Commissioner
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Ari Q. Fitzgerald
Legal Advisor to the Chairman
1919 M Street, N.W.
Suite 814
Washington, D.C. 20554

Kevin Martin, Legal Advisor to
Commissioner Furchtgott-Roth
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

James Casserly, Legal Advisor to
Commissioner Ness
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Kyle D. Dixon, Legal Advisor to
Commissioner Powell
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Paul F. Gallant, Legal Advisor to
Commissioner Tristani
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Regina M. Keeney, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Roderick K. Porter, Deputy Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

James L. Ball
Associate Chief, Policy
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Mindy Ginsburg
Associate Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Peter C. Pappas
Associate Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Robert Calaff, Senior Counsel
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Rebecca Arbogast
Senior Legal Advisor
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Diane J. Cornell, Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Mindel De La Torre, Deputy Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

George Li, Deputy Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Troy Tanner, Chief
Policy and Facilities Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Thomas Wasilewski, Chief
Multilateral & Development Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Richard B. Engelman, Chief
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Larry W. Olson, Deputy Chief
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Thomas M. Alberg, Legal Advisor
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

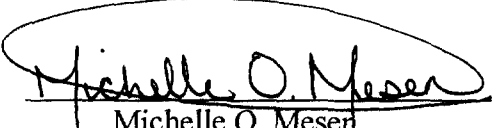
Linda Dubroff, Legal Advisor
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Charles C. Hunter
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

James Ballis, Chief
Notifications Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Pamela Gerr, Chief
Negotiations Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006



Michelle O. Meser